

Barry Vogel
California State Bar Number 60141
PO Box 383
Ukiah, California 95482
(707) 462-6541
vogel@pacific.net
Attorney for Save Ukiah Post Office Committee

Michael E. Sweeney, in pro per
P.O. Box 1001
Ukiah, CA 95482
(707) 468-9710
sweeney@pacific.net

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

August 10, 2011

Save Ukiah Post Office Committee,)
and Michael E. Sweeney,)
)
Petitioners.)
)
vs.)
)
United States Postal Service,)
)
Respondent.)
)
_____)

Docket No. A2011-21

PETITIONERS' BRIEF
OPPOSING CLOSURE AND
CONSOLIDATION OF UKIAH
MAIN POST OFFICE

I. NATURE OF PETITION

Petitioners seek an order by the Commission to set aside the Postal Service's decision to close the Ukiah Main Post Office, Ukiah, California and consolidate it into another postal facility. The actions of the Postal Service regarding the Ukiah Main Post Office constitute violations of 39 USC 404(a), 39 CFR 241.3, the Freedom of

Information Act (5 USC 552), and USPS Facilities Environmental Guide Handbook RE-6.

The Postal Service decision is arbitrary, capricious, an abuse of discretion, not in accordance with law, without observance of procedure required by law, and unsupported by substantial evidence on the record.

II. STATEMENT OF FACTS

The Ukiah Main Post Office, 224 Oak Street, Ukiah, is Postal Service property and has been a centerpiece of the city's downtown since it was opened in 1937. It has approximately 1500 post office boxes and receives heavy customer traffic, much of it walk-ins from the surrounding commercial and residential areas.

A. Denial of Public Information

In early 2011, it became known in Ukiah that the Postal Service was planning closure of the Ukiah Main Post Office. On January 31, 2011, Petitioner Sweeney made a Freedom of Information Act request to the Postal Service for the feasibility study, building survey, preliminary budget and other writings pertaining to the proposed closure. On February 17, 2011, Postal Service Facilities Manager James Barnett denied the FOIA request for all significant documents on the grounds that they were exempt from disclosure as internal deliberative documents. On February 23, 2011, Sweeney appealed the denial of the FOIA request to Postal Service General Counsel Mary Anne Gibbons [Exhibit 1]. The appeal was denied on March 25, 2011 [Exhibit 2].

Responding to public concern, Congressman Mike Thompson wrote to the Postmaster General on February 2, 2011, requesting a copy of the assessment study on the closure and the financial analysis [Exhibit 3]. The Postal Service denied his request in a letter dated February 15, 2011 [Exhibit 4].

On March 9, 2011, the City of Ukiah sent a letter to the Postal Service [Exhibit 5] repeating an earlier request for the building survey and asking for permission to conduct an independent appraisal of the condition of the Main Post Office. The Postal Service denied these requests in a letter dated March 23, 2011 [Exhibit 6].

The County of Mendocino Board of Supervisors demanded openness in their letter dated March 22, 2011 [Exhibit 7] asking the Postal Service to release all information pertaining to the proposed closure and to allow the City of Ukiah to survey the building. This request, like all the others, was refused.

B. Closure recommendation announced

On February 23, 2011, representatives of the Postal Service hand-delivered a letter [Exhibit 8] to Ukiah Mayor Mari Rodin, at a meeting with city officials and concerned citizens, formally stating a determination to “relocate the retail services currently located at 224 North Oak Street to our facility located at 671 Orchard Avenue.” It was explained by the Postal Service representatives that this meant the Ukiah Main Post Office building would be closed and sold.

The facility at 671 Orchard Avenue (hereinafter, “Orchard Avenue Post Office”), referred to in the letter, was built by the Postal Service in 1998. It is located at the eastern edge of the City of Ukiah and is 0.9 miles by road from the Ukiah Main Post Office. The Orchard Avenue Post Office has two small customer service counters and accepts bulk mailings and bulk mailing payments, dispenses general delivery mail to customers, dispenses undelivered parcels to customers, and provides customer lock box services for off-site locations. The Orchard Avenue Post Office is the operations base for route delivery in the greater Ukiah area and distributes mail to and receives mail from surrounding postal facilities, including the Ukiah Main Post Office. It has no subsidiary relationship to the Ukiah Main Post Office; in fact, the office of the Postal Service official in charge of both facilities (sometimes designated the “Officer-in-Charge” and sometimes “Postmaster”) is located at the Orchard Avenue Post Office.

At the meeting with local officials and citizens on February 23, 2011, the Postal Service representatives handed over a partial page [Exhibit 9] entitled "Ukiah Post Office" that purported to summarize financial projections which justified the closure [hereinafter, "USPS Justification"]. Throughout the following three months of intense controversy, this partial page comprised all the significant information that the Postal Service was willing to provide about the alleged economics of the proposed closure and the analysis that justified the decision.

The "USPS Justification" page admits a projected cost of \$360,000 to remodel the Orchard Avenue Post Office to replace the Main Post Office, in order to add a parking lot, customer counter, thousands of post office boxes, and other changes. Petitioners believe this cost exceeds the present value of any savings, once all financial considerations including loss of business are accounted for.

Annual savings from closure of \$186,921 in four categories were claimed in the "USPS Justification," but these savings have been vigorously challenged by Petitioners and others. In the face of persistent questions, the Postal Service has repeatedly refused to provide answers or additional information. For example, the largest single cost savings, \$81,719 per year for eliminating a clerk, seemed erroneous since the Postal Service was simultaneously saying that no personnel would be laid off as a result of the decision. The second largest savings, \$73,392 for "building maintenance labor," is known to be greatly exaggerated since the same maintenance employee also takes care of the Orchard Avenue Post Office and customer lock boxes on the carrier routes.

C. Public process of 39 CFR 241.3 ignored

The Postal Service refuses to recognize that the closure of Ukiah Main Post Office must be carried out in compliance with 39 CFR 241.3 because it entails the physical abandonment of the 74-year-old Main Post Office at 224 N. Oak Street and the consolidation of its functions into the Orchard Avenue Post Office. While the Postal Service has been willing to provide public notice and opportunity for public comment, it has failed to respect the essential public rights under 39 CFR 241.3 for a written closure

proposal justified under five criteria; a complete indexed public record available for inspection; a Postal Service analysis of public comments; a decision with written findings supported by the record; and notification of right of appeal to the Postal Regulatory Commission.

To avoid these inconvenient public rights, the Postal Service maintains that the closure is only a "relocation" governed by 39 CFR 241.4, meaning that the Postal Service must allow the public to speak. This offer to allow the public to speak is meaningless because the Postal Service has no obligation to listen to what is said, let alone answer any important questions that might cast into doubt the wisdom of the undertaking. The language and context of 39 CFR 241.4 clearly show that it is intended to apply to situations where an existing post office is too small or otherwise unsatisfactory and must be moved to a new location. That is not the case in Ukiah, where the Main Post Office is unchallenged as having an excellent location and the consolidation into the Orchard Avenue Post Office is proposed only for alleged and substantial economic reasons.

D. Historic eligibility certified

On April 8, 2011, Congressman Mike Thompson forwarded a completed nomination of the Ukiah Main Post Office for listing on the National Register of Historic Places to the Postal Service and the California State Office of Historic Preservation. On May 4, 2011, the California State Office of Historic Preservation certified and supported the nomination and forwarded it to the Postal Service [Exhibit 10].

E. Public outcry

On April 21, 2011, Postal Service representatives appeared at a special Ukiah City Council meeting and public hearing on the proposed closure, attending by approximately 300 people and broadcast live on television throughout the area. The Postal Service presented no specifics beyond what was originally disclosed on February

23, 2011 in the USPS Justification page. Sixty members of the public spoke, and every one of them opposed the closure. Hours of detailed testimony were given on the adverse environmental, economic, convenience, cultural and historic preservation impacts of the proposed closure. Each of the Postal Service's alleged cost savings from closure was challenged on factual grounds, and explanations were asked of the Postal Service representatives, but no new answers were given. The Save the Ukiah Post Office Committee presented 5,000 petition signatures opposing the closure and consolidation of the Ukiah Main Post Office.

Vigorous efforts continued to persuade the Postal Service to engage with the community and to open its records so the logic of the decision could be examined. For example, Michael E. Sweeney wrote on April 23, 2011 to the Postal Service General Counsel itemizing violations of federal law concerning the proposed closure [Exhibit 11].

F. Decision announced

All public entreaties were unavailing, and on June 20, 2011, the Postal Service sent a terse letter [Exhibit 12] to the City of Ukiah stating that the recommendation to "relocate" had already been approved by the Postal Service Vice President for Facilities, but that an appeal could be made to the same person within the following 15 days. A "Notice to Customers" with the same date and information was posted in the lobby of the Main Post Office.

Although the Ukiah community disagrees with the Postal Service regarding the appeal procedure that applies to this decision, at least four appeals were made, by the City of Ukiah [Exhibit 13], County of Mendocino, Save Ukiah Post Office Committee, and Michael E. Sweeney. The appeals weren't made in the expectation that Postal Service management will be any more responsive than in the past, but rather for the purpose of demonstrating that all possible administrative remedies have been exhausted. To date, no response to the appeals has been received.

III. ARGUMENT

Like the Commission, Petitioners are keenly aware of the dire financial pressure that the Postal Service feels at the national level. This pressure has been passed downward to district managers who must quickly identify large savings through a substantial reduction in postal facilities. These circumstances almost guarantee that some mistakes will be made, and that undue harm will be caused to certain communities while the Postal Services saves little or nothing.

The only protection against faulty decisions is open disclosure of information and the requirement that the Postal Service justify decisions based on substantial information in the record. These requirements exist in 39 CFR 241.3. The Postal Service, in its Motion for Dismissal, asks the Commission to find technicalities to deny jurisdiction.

A. 39 CFR 241.3 applies, not 39 CFR 241.4

As discussed earlier, the decision is a *de facto* closure of a facility that the Postal Service has operated in downtown Ukiah for the past 74 years. The substitute facility is far from the downtown at the extreme edge of the City of Ukiah. A move of such a distance out of the commercial center of the community fundamentally changes the level of convenience and service provided by the post office, as explained in great detail at the public meeting April 21, 2011. For example, the post office will cease to be a walking destination and will become only accessible in a practical sense by automobile. Many customers will give up their post office box rentals and cease using the Postal Service for parcel mailings because of the loss of proximity. Thus the existing post office is not simply being "relocated," but eliminated with a substitute that has significantly lesser ability to fulfill the Postal Service's mission.

Since the substitute is an existing facility (the Orchard Avenue Post Office), the decision constitutes a "consolidation with another post office" under 39 CFR 241.3(a). The arcane debate over the precise definitions of "post office," "station," and "branch," or the fact that the Postal Service chooses to call the Orchard Avenue Post Office an

"annex," doesn't alter the reality that the Orchard Avenue Post Office provides some retail services, is the operational, processing and delivery base for the greater Ukiah area, and has no subsidiary relationship to the Ukiah Main Post Office (it would be more realistic to call the Ukiah Main Post Office a station of the Orchard Avenue Post Office.) Perhaps unwittingly, the Postal Service has created two "post offices" in the City of Ukiah, and if it wants to close one and move its functions to the other, it must obey the regulations for "consolidation."

The *prima facie* motive for denying the applicability of 39 CFR 241.3 is avoidance of the duty to perform an objective analysis, make written findings, disclose the facts to the public, and justify the decision by substantial evidence in the public record.

As the Commission has stated, "Currently the Postal Service does not adequately reflect potential revenue declines and operational expenses that may result from closing a post office." [Docket No. N2009-1, p. 2]. The Ukiah community believes this observation applies exactly to the Ukiah decision and due process requires full disclosure of the relevant facts. The Postal Service's repeated refusal to respect these rights is not in accordance with law and the decision was made without observance of procedure required by law and is unsupported by substantial evidence on the record.

B. Cumulative denial of Freedom of Information constitutes abuse of discretion

While the Commission has no special authority to enforce the Freedom of Information Act, it should evaluate the cumulative impact of the Postal Service's secrecy on the proper exercise of the Postal Service's authority under 39 USC 404(a)(3).

In the course of the multiple FOIA request and appeals, the Postal Service admitted to the existence of the following documents:

- "Facility Optimization Study," 9 pages, November 15, 2010, "presenting the Postal Service's Ukiah California facilities and revenue figures, recommended actions, estimated costs, facility impacts, reasons for eliminating alternatives, and proposed implementation schedule."

- "HVAC, Electrical & Roof Replacement Survey, Study and Preliminary Design and Construction Budget Cost Estimate," 43 pages, March 26, 2010, "developed by outside consultants."
- "Justification Expenditure," 5 pages, June 11, 2010, "for HVAC upgrades, electrical and lighting upgrades, and new fire alarm system installed."
- "Facilities Optimization Briefing Sheet, 1 page, January 28, 2011, "describing background, proposed project scope, project objectives, and a financial summary."

[See Exhibit 2]

Scrutiny of these documents would give the Ukiah community an opportunity to correct any factual errors in the Postal Service analysis, to identify issues or considerations that have been overlooked, and to propose creative or cooperative solutions that might alter the decision. These documents must contain some of the analysis and findings mandated by 39 CFR 241.3.

While disclosure might cause some embarrassment to district-level Postal Service officials, it would unquestionably conform with the official Postal Service policy on Freedom of Information. As the City of Ukiah quoted the Postal Service itself in its March 9, 2011 letter:

"It is the policy of the Postal Service to make its official records available to the public to the maximum extent consistent with the public interest. This policy requires a practice of full disclosure subject only to the specific exemptions required or authorized by law." [39 CFR 265.2(a)]

Although not required to do so, the Postal Service chose to invoke exemptions for "deliberative process" and "good business practice." These excuse wore very thin when the City asked for permission to perform its own building survey to assess the needs of the Main Post Office. Then the denial was more blunt: "The Postal Service is not required to allow local government officials to come in and inspect Postal Service

premises to substantiate costs to our repairs." [Exhibit 6], Ujwalal Tamaskar, USPS, to Mayor Mari Rodin, March 23, 2011].

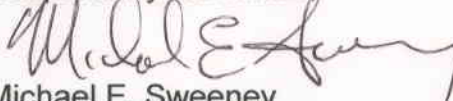
No "good business practice" exists to justify keeping these documents secret and the "deliberative process" was clearly over by February, 2011. The obvious purpose of the Postal Service's pattern and practice of secrecy is to cripple and discourage opposition to the imperious decision that had already been made by the district officials. This constitutes abuse of discretion and denial of due process.

IV. REMEDY REQUESTED

Petitioners request that the Commission set aside the decision of the Postal Service to close and consolidate the Ukiah Main Post Office and to further instruct the Postal Service to comply with laws and regulations as they pertain to potential closure and consolidation of this facility.

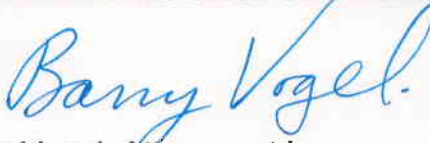
Petitioners further request that the Commission advise the Postal Service that the full disclosure of assessments, studies and budgets pertaining to potential closure and consolidation are essential to allow the public to help the Postal Service make the correct facility decisions, and that statutory exemptions from disclosure should not be invoked merely to hide the decision-making process from public scrutiny.

Respectfully submitted,


Michael E. Sweeney

Save Ukiah Post Office Committee

By:


Barry Vogel, Attorney at Law

Subscription

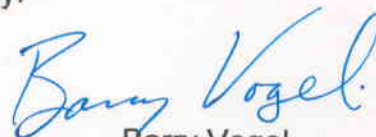
I certify under penalty of perjury that I have read the foregoing Complaint; I know the contents thereof; that to the best of my knowledge, information and belief every statement contained in the document is true and no such statements are misleading; and that such document is not filed for purposes of delay.



Michael E. Sweeney

Subscription

I certify under penalty of perjury that I have read the foregoing Complaint; I know the contents thereof; that the Complaint has been subscribed and executed in the capacity specified in the document as representative of the Save Ukiah Post Office Committee with full power and authority so to do; that to the best of my knowledge, information and belief every statement contained in the document is true and no such statements are misleading; and that such document is not filed for purposes of delay.



Barry Vogel
Attorney at Law

Exhibit 1

Docket No. A2001-21

P.O. Box 1001
Ukiah, CA 95482
February 23, 2011

Mary Anne Gibbons
General Counsel
U.S. Postal Service
475 L'Enfant Plaza SW Room 6004
Washington, DC 20260-1100

Faxed to 202-268-6981

RE: Appeal of denial of FOIA request

Dear Ms. Gibbons:

On January 31, 2011, I made a Freedom of Information Act request for four categories of USPS documents:

1. A document described by a USPS official as "a recent study to relocate the [Ukiah, California] retail operation from the downtown location to the annex."
2. A document described by a USPS official as "a building survey [of Ukiah main post office] completed by a Mechanical, Electrical and Architectural firm to address the electrical, HVAC and roof replacement."
3. A document described by a USPS official as "the preliminary budget cost estimate" for repairs identified for the Ukiah main post office.
4. Other memoranda, reports, directives, policy statements or other writings in the possession of USPS San Francisco District office concerning the possible relocation of the Ukiah, California retail postal office services.

On February 17, 2011, I received a letter from Jim Barnett, Manager, Pacific Facilities Service Office, USPS, that denied access to all significant documents.

I hereby appeal the denial of my request on the grounds that exemptions from FOIA are improperly claimed, that no possible harm to legitimate USPS interests could occur from release, and that the true and obvious motive for refusal is to obstruct public review and comment on the USPS decision to close the Ukiah main post office. Any conceivable value to USPS in concealment of these documents is outweighed by the compelling public interest in disclosure.

I request that you direct that all documents described in my request are released to me.

Certain USPS officials are seeking to close the Ukiah main post office. This intention was formally stated to the City of Ukiah in a letter dated February 23, 2011 [attached],

which was hand-delivered at a meeting at Ukiah City Hall between USPS representatives and city officials and community members.

At the meeting, USPS analyst Diana Alvarado distributed a one-page document [attached hereto] which purported to show various costs and benefits which USPS would realize by this closure. In essence, this was a highly selective interpretation of the information which is presumably addressed in the documents described in my FOIA request. If the claims of exemption for "trade secrets," "intra-agency records," and "pre-decisional" matters made by Mr. Barnett in his denial had any merit, then USPS should have refrained from distributing this document at the February 23, 2011 meeting.

What is going on here is a disgraceful attempt to allege certain financial facts to the affected public while cynically denying the public the opportunity to determine if the alleged facts are valid. If the USPS truly stands to benefit financially from Ukiah closure, it has no reason to hide information.

Furthermore, the numbers set forth in Ms. Alvarado's one-page sheet strongly suggest errors in analysis by the USPS.

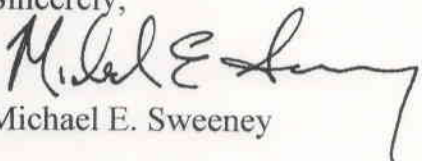
For example:

1. The document claims that the Ukiah post office building needs \$780,000 in repairs, but USPS can sell it for \$600,000. One or both of these numbers is wildly inaccurate. In the depressed Ukiah real estate market, no 70-year-old abandoned post office is saleable if it needs any significant repairs, let alone \$780,000 worth.
2. The document claims \$81,719 savings from dismissal of one postal clerk. The USPS representatives couldn't offer a coherent explanation of why closure of Ukiah main post office would be required to carry out this reduction, if it is in fact possible. The main post office currently employs three full-time clerks and often has additional help from employees who are based at the annex.
3. The document claims building maintenance labor savings of \$73,392, which implies that such an amount is presently being expended on the Ukiah main post office. The public has seen the gross neglect of this facility for many years and it is inconceivable that any entity, even the federal government, could spend \$73,392 per year with so little to show for it.
4. The document claims utilities savings of \$28,065, which could be accurate, given that the neglect of the building's maintenance has included failure to fix the door-closing mechanism on the front door, so that it stays wide open, winter and summer, driving up heating and cooling bills.
5. The document estimates \$360,000 expense to remodel the annex so it can replace the downtown building. This figure could be accurate. But what is missing is any evidence of consideration of an alternative strategy: spending only a portion of that \$360,000 to pay for the actual repair needs of the old building (not the

incredible \$780,000 figure). The city and the community would appreciate the opportunity to provide the USPS—free of charge—with an expert repair bid for any deficiencies in the old building, but the FOIA denial makes it impossible to provide this assistance because the building survey is being kept secret.

Your thoughtful consideration of this request would be appreciated. The interests of the USPS aren't served by allowing lower management to misuse FOIA exemptions in order to prevent scrutiny of important decisions.

Sincerely,


Michael E. Sweeney

enclosed:

1. FOIA request, January 31, 2011, by Michael E. Sweeney, with attached letter from Jim D. Barnett, Manager, Southwest and Pacific Facility Service Offices, USPS
2. Letter, February 17, 2011, Jim D. Barnett to Michael E. Sweeney
3. Letter, February 23, 2011, Jim D. Barnett to Mayor Rodin, City of Ukiah.
4. "Ukiah Main Office" information sheet, distributed by USPS at meeting, February 23, 2011

cc:

Congressman Mike Thompson
430 N. Franklin Street
Fort Bragg, CA 95437

Mayor Mari Rodin
City of Ukiah
300 Seminary Avenue
Ukiah, CA 95482

CORPORATE LAW



CERTIFIED MAIL – RETURN RECEIPT REQUESTED

March 25, 2011

Michael E. Sweeney
P.O. Box 1001
Ukiah, CA 95482

Re: Freedom of Information Act Appeal 11-041

Dear Mr. Sweeney:

This responds to your letter dated February 23, 2011, which was received in our office on February 24, 2011. In your letter, you appeal the partial denial of your request for records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

I. Background

By correspondence dated January 31, 2011, you requested the following:

- a. "A recent study to relocate the [Ukiah, California] retail operation from the downtown location to the annex";
- b. "A building survey of [Ukiah main post office] completed by a Mechanical, Electrical, and Architectural firm to address the electrical, HVAC and roof replacement";
- c. "'The preliminary budget cost estimate' for repairs identified in (b)"; and
- d. Any other memoranda, reports, directives, policy statements, or other writings in the possession of the USPS San Francisco District office concerning the possible relocation of the Ukiah, California retail postal office services.

By letter dated February 17, 2011, the Pacific Facilities Service Office provided you with 27 pages of record material, of which 22 pages of the Postal Service's Community Relations Regulations were released in their entirety, and five pages of the March 26, 2010, "HVAC, Electrical & Roof Replacement Survey, Study, and Preliminary Design and Construction Budget Cost Estimate," developed by outside consultants. The Postal Service's Pacific Facilities Service Office withheld the following records in their entirety pursuant to FOIA Exemptions 2, 3 (in conjunction with 39 U.S.C. § 410(c)(2)), and 5 (5 U.S.C. §§ 552(b)(2), (3), (5)):

- Forty-three (43) pages of the March 26, 2010 study entitled "HVAC, Electrical & Roof Replacement Survey, Study, and Preliminary Design and Construction Budget Cost Estimate," developed by outside consultants.
- Ten (10) pages of a contract work order proposal for mechanical and electrical upgrades to the Ukiah Main Post Office, prepared by outside consultants, dated May 27, 2010, containing a proposed scope of work, budget cost summary, and fee and expense list.
- Five (5) pages of a Postal Service document, prepared by the Pacific Facilities Service Office and entitled "Justification Expenditure," dated June 11, 2010, for HVAC upgrades, electrical and lighting upgrades, and new fire alarm system installed.
- Nine (9) pages of a "Facility Optimization" study overview, dated November 15, 2010, presenting the Postal Service's Ukiah, California facilities and revenue figures, recommended actions, estimated costs, facility impacts, reasons for eliminating alternatives, and proposed implementation schedule.
- One (1) page of a Postal Service "Facilities Optimization Briefing Sheet," dated January 28, 2011, describing background, proposed project scope, project objectives, and a financial summary.

II. Analysis

The FOIA generally requires government agencies to disclose records within their possession. The FOIA contains several exemptions, however, that permit agencies to withhold certain records. 5 U.S.C. § 552(b)(1)-(9). After careful review and analysis, this office has decided to affirm the decision by the Pacific Facilities Service Office (PFSO) for the reasons set forth below.

Exemption 3

FOIA Exemption 3 provides that agencies may withhold records that are exempted from disclosure by another statute that "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). Although the U.S. Postal Service is generally subject to the requirements imposed by the FOIA, 39 U.S.C. § 410(b)(1), subsection (c)(2) of section 410 provides that subsection (b)(1) does not require the disclosure of "information of a commercial nature . . . whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed."

Because the plain language of 39 U.S.C. § 410(c)(2) explicitly addresses the issue of public disclosure of information, this statute should be construed as operating independently of and as an exempting statute within the scope of Exemption 3(B). See Wickwire Gavin, P.C. v. U.S. Postal Serv., 356 F.3d 588, 592 (4th Cir. 2004) (affirming the district court's determination that the "good business" practice exception of 39 U.S.C. § 410(c)(2) satisfies the second requirement of FOIA Exemption 3). This section was enacted as part of the Postal Reorganization Act, 39 U.S.C. §§ 101, et seq., (1970), which established the Postal Service as an independent executive branch establishment and generally directed it to conduct its operations in accordance with sound business principles.

U.S. Postal Service regulations list eight illustrative categories of "information of a commercial nature ... which under good business practice would not be disclosed." 39 CFR § 265.6(b)(3). For instance, this includes all "[r]ecords compiled within the Postal Service which would be of potential benefit to persons or firms in economic competition with the Postal Service." 39 CFR § 265.6(b)(3)(vi). The regulations, however, do not define the term "commercial." Information may be considered commercial "if it relates to commerce, trade, or profit." McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1285 (9th Cir. 1987) (interpreting "commercial" as used in FOIA fee waiver provision).

Several cases in which courts have upheld Postal Service withholding under section 410(c)(2) have concerned proprietary information. See, e.g., Wickwire Gavin v. U.S. Postal Serv., 356 F.3d 588 (4th Cir. 2004) (spreadsheets detailing quantity and pricing information in a contract between USPS and a successful bidder for a mailing supplies contract); Piper & Marbury LLP v. U.S. Postal Serv., 2001 WL 214217, at *4-5 (D.D.C. Mar. 6, 2001) (figures and data in a contract between USPS and DHL); Reid v. U.S. Postal Serv., No. 05-cv-294-DRH, 2006 WL 1876682, at *7-8 (S.D. Ill. July 5, 2006), modified, 2007 WL 3119803 (S.D. Ill. Oct. 24, 2007) (information in USPS mailing permits for a private marketing firm would reveal the firm's clients, mailing agents, and charges by the USPS); Airline Pilots Ass'n Int'l v. U.S. Postal Serv., Civil Action No. 03-2384, 2004 WL 5050900 (D.D.C. June 24, 2004) (information in delivery agreements between USPS and FedEx including pricing and rates).

To determine the scope of "good business practice," one looks to the commercial world, management techniques, and business law, as well as the standards of practice adhered to by large corporations. Nat'l Western Life Ins. Co. v. United States, 512 F. Supp. 454, 459 (N.D. Tex. 1980). The Postal Service may withhold information of a commercial nature if large businesses would do the same. Wickwire Gavin v. U.S. Postal Serv., 356 F.3d 588 (4th Cir. 2004). In Wickwire Gavin, an unsuccessful bidder for a contract requested a copy of the awarded contract and other documents. These documents were provided, but thirteen pages of spreadsheets detailing quantity and pricing information were withheld. The court ruled that the Postal Service properly relied on FOIA Exemption 3 in withholding the spreadsheets and rejected the requester's argument that the Postal Service should have to show that it might suffer some competitive harm if the information became public. Id. at 594-95. Rather, the court said that competitive harm may be one of many considerations embedded within the good business practice exception itself. Id. at 595. In general, it is reasonable to expect that a business, whether it is the submitter or the Postal Service, would suffer competitive harm if the Postal Service were to disclose information submitted by its customers when similar information would not be disclosed by firms in competition with the business. See, e.g., Westinghouse Elec. Corp. v. Schlesinger, 392 F. Supp. 1246, 1249 (E.D. Va. 1974), aff'd, 542 F.2d 1190 (4th Cir. 1976).

The majority of the documents that were withheld in their entirety by the PFSO were properly withheld pursuant to FOIA Exemption 3, in conjunction with 39 U.S.C. § 410(c)(2). The March 26, 2010 study consists of commercial and financial information that would not be released by similar businesses as the Postal Service, including: a summary of findings, including proposed scope of work, mechanical and electrical evaluations, blue prints of buildings and area calculations, photographs of building and equipment deficiencies, recommended actions and estimated costs, budget cost

summaries, and fee and expense lists. Similar information can be found in the May 27, 2010 contract work order proposal. The remaining documents also provide commercial and financial information including proposed estimated costs, budget summaries, a facility investment cost sheet, cost/savings for various actions, proposed project scope, project objectives, and a financial impact summary.

These documents contain substantial information about potential and estimated costs of work which would be put out for bid under postal procurement procedures. The release of the documents containing information relating to estimated costs, proposed budgets and specifications for the potential work would have an adverse effect on the bidding process and negotiation of future contracts. Since releasing documents under the FOIA requires the Postal Service to release them to any future requester, a potential bidder would then have access to inside information that could taint the bidding process and potentially result in the Postal Service paying more for a contract than it otherwise would have to pay in a competitive bidding process.¹ Thus, we conclude that it would not be good business practice to disclose this type of commercial information described above.

The responsive records also contain photographs of various areas of the building and the general blueprint/layout. The Postal Service will not release blueprints or architectural drawings of the facility since release of this type of record could pose a security and a commercial risk to the Postal Service, enabling members of the public to potentially expose deficiencies in the Postal Service's operations and facility layouts. Therefore, these documents may also be withheld from disclosure pursuant to Exemption 3, in conjunction with 39 U.S.C. §410(c)(2). In withholding these documents, we do not mean to imply that you would engage in any criminal activity or use the records for an improper purpose. As noted earlier, when information is disclosed in response to a request under the FOIA, however, it becomes publicly available, and we must consider the harm that may result from general disclosure. See Nat'l Assoc. of Retired Federal Employees v. Horner, 879 F.2d 873,875 (D.C. Cir. 1989), cert. denied, 494 U.S. 1078 (1990).

We also determine that 39 U.S.C. § 410(c)(5) operates to authorize the withholding of the requested records. Subsection (c)(5) of section 410 permits the Postal Service to withhold "the reports and memoranda of consultants or independent contractors except to the extent that they would be required to be disclosed if prepared within the Postal Service." Outside consultants were asked to assist in preparing a report for improving and upgrading the Ukiah, California Main Post Office. In this sense, these outside companies are serving in the capacity of consultants to the agency. As explained above, the commercial and financial documents contained in these reports would be eligible for protection under subsection 410(c)(2); thus, the documents are accordingly eligible for protection under subsection 410(c)(5) as well.

¹ Similarly, the Department of Defense may withhold contractor proposals under FOIA Exemption 3, unless set forth or incorporated by reference in a contract entered into between DOD and the contractor that submitted the proposal, in conjunction with 10 U.S.C. § 2305(g). See, e.g., Chesterfield Assocs., Inc. v. U.S. Coast Guard, No. 08-CV4674, 2009 WL 1406994, at *1-2 (E.D.N.Y. May 19, 2009).

Exemption 4

The financial and commercial information contained within these reports prepared by these outside consultants may also be withheld under FOIA Exemption 4. Exemption 4 permits agencies to withhold "trade secrets and commercial or financial information obtained from a person that is privileged or confidential." 5 U.S.C. § 552(b)(4).

Financial or commercial information that is *voluntarily* provided to the government is afforded protection as "confidential" information "if it is of a kind that would customarily not be released to the public by the person from whom it was obtained." Critical Mass Energy Project v. Nuclear Regulatory Comm'n, 975 F.2d 871, 879 (D.C. Cir. 1992); see also McDonnell Douglas Corp. v. NASA, 180 F.3d 303, 305 (D.C. Cir. 1999).

Information that is *required* to be submitted to the government, on the other hand, is ordinarily released unless it poses a "likelihood of substantial harm to the competitive positions of the parties from whom it has been obtained." National Parks & Conservation Ass'n v. Morton, 498 F.2d 765, 771 (D.C. Cir. 1974).

The D.C. Circuit has prescribed an objective test in determining whether information is provided voluntarily – "actual legal authority, rather than parties' beliefs or intentions, governs judicial assessments of the character of submissions ... if an agency has no authority to enforce an information request, submissions are not mandatory." Ctr. for Auto Safety v. Nat'l Highway Traffic Safety Admin., 244 F.3d 144, 149 (D.C. Cir. 2001). The court in Airline Pilots Ass'n, Int'l found that the USPS did not have legal authority to compel FedEx to submit the redacted information, including pricing and rate information, operational details and specifications, performance requirements and obligations, and negotiated general terms and conditions. 2004 WL 5050900, at *5.

Where a contract results from "intense arms-length negotiations," as opposed to a solicitation by the government for a competitive bid, the contract terms (which usually include pricing and rate information) are considered to be "voluntarily" provided. Id. at *3. Cf. ERG Transit Sys. v. Wash. Metro. Area Transit Auth., 593 F. Supp. 2d 249, 254-55 (D.D.C. 2009) (holding that information submitted in connection with proposal initiated by submitter to negotiate existing contract was voluntarily submitted). There is no indication of any demand by the Postal Service of any specific terms that had to be submitted for consideration, and thus, the Postal Service takes the position that these contract work proposals and budget cost estimates are submitted "on a voluntary basis" for the purpose of Exemption 4.

Information may be considered exempt from disclosure if it is information that is not customarily released to the public. Critical Mass, 975 F.2d at 879; Ctr. for Auto Safety, 244 F.3d at 147-48; Airline Pilots Ass'n, Int'l, 2004 WL 5050900 at *5. See also Judicial Watch v. U.S. Dept. of Energy, 310 F.Supp.2d 271, 308 (D.D.C. 2004) (remarking that the submitter "has indicated that [the requested documents] are not customarily disclosed to the public"); Cortez III Serv. Corp. v. NASA, 921 F. Supp. 8, 13 (D.D.C. 1996) (noting that the submitter's "unrefuted sworn affidavits attest to the fact that G & A rate ceilings are the type of information that is not regularly disclosed to the public").

Exemption 4 categorically protects proprietary information contained in contract work proposals from disclosure since the information is not customarily released to the public by private businesses. Because the FOIA does not apply to private businesses, these companies are not required to respond to requests from members of the public for information pertaining to who they contract with or what services that they may provide to their customers. Therefore, if the Postal Service releases contract work proposals and other recommended work studies pursuant to the FOIA, it will be releasing information that would not be likely to be disclosed by other private businesses. Thus, Exemption 4 protects contract work proposals and budget cost estimates.

Exemption 5

Certain information contained in the requested records is properly withheld under FOIA Exemption 5. Exemption 5 permits agencies to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency." 5 U.S.C. § 552(b)(5). Generally, inter-agency and intra-agency records are documents generated by an agency for use within the agency or within the executive branch. The exemption permits agencies to withhold records that would be privileged in the context of civil discovery. Nat'l Labor Relations Bd. v. Sears, Roebuck & Co., 421 U.S. 132, 149 (1975).

The records withheld pursuant to Exemption 5 in this case are protected by the "deliberative process" privilege, see id. at 150-52. This privilege is intended to protect the free flow of ideas in the decision-making process of government agencies, by protecting internal documents that are both "predecisional" and "deliberative." Id. at 149-54. The privilege protects not merely documents, but also the integrity of the deliberative process itself where the exposure of that process would have an adverse affect on the deliberative process of the agency. See, e.g., Nat'l Wildlife Fed'n v. U.S. Forest Serv., 861 F.2d 1114, 1119 (9th Cir. 1988) ("[T]he ultimate objective of Exemption 5 is to safeguard the deliberative process of agencies[.]").

Internal documents containing the opinions, suggestions, or recommendations of government employees are considered to contain "deliberative" information within the meaning of FOIA Exemption 5. See Coastal States Gas Corp. v. U.S. Dep't of Energy, 617 F.2d 854, 866 (D.C. Cir. 1980). Factual information may also be exempt from mandatory disclosure under Exemption 5 if the selection of the facts at issue reflects the mental processes of agency employees. See Nat'l Wildlife Fed'n, 861 F.2d at 1118-19. See also Mead Data Central, Inc. v. Department of the Air Force, 575 F.2d 932, 934-35 (D.C. Cir. 1978) (cost comparisons, feasibility opinions, and other data relevant to a procurement decision); Wolfe v. Human & Health Servs., 839 F.2d 768, 776 (D.C. Cir. 1988) (en banc) (revealing status of factual information in proposal as part of deliberative process "could chill discussions at a time when agency opinions are fluid and tentative").

The Postal Service studies you requested, in particular the 'Justification Expenditure' report dated June 11, 2010, the Facility Optimization study overview, dated November 15, 2010, and the Facilities Optimization Briefing Sheet, dated January 28, 2011, are all internal, "predecisional" documents because they have been prepared by Postal Service employees to assist postal officials in making a final decision about whether to make the

designated repairs at the Ukiah Main Post Office or sell and vacate the main Post Office and relocate carriers or retail operations to the Ukiah Annex. In addition, scope of work proposals qualify for the deliberative process privilege even when supplied by outside consultants. See Hoover v. U.S. Dep't of the Interior, 611 F.2d 1132, 1143 (5th Cir. 1980). These records are currently antecedent to any final agency decision about changes to be made to Postal Service operations in Ukiah, California. Thus, the withheld records in this case are both "predecisional" and "deliberative."

Since these studies and documents have not been shared outside the agency and reflect the agency's ongoing process of examining, interpreting, and implementing its policies, they are protected by the deliberative process privilege and are exempt from mandatory disclosure pursuant to Exemption 5. Hence, we uphold the initial decision insofar as it applied Exemption 5 to the deliberative content in the responsive records.

Additional Records

Finally, in your initial FOIA request, dated February 23, 2011, you had requested any "other memoranda, reports, directives, policy statements or other writings in the possession of USPS San Francisco District office concerning the possible relocation of the Ukiah, California retail postal office services." In its February 17, 2011 response, the PFSO stated that they were unaware of any additional records. This office, however, interpreted your request for "other writings" to include e-mails on the topic. Thus, after consulting with responsible persons in the San Francisco District Office, this office has retrieved an additional 57 pages of records. After careful review and analysis this office has decided to discretionarily disclose² 52 pages with redactions and withhold 5 pages in their entirety pursuant to FOIA Exemptions 3 (in conjunction 39 U.S.C. § 410(c)(2)), 5, and 6. 5 U.S.C. §§ 552(b)(3), (5), (6). We defer to the same reasoning as stated above for redacting and withholding these records pursuant to Exemption 3, in conjunction 39 U.S.C. § 410(c)(2), and Exemption 5.

Exemption 6

We have decided to redact contact information (phone numbers and e-mail addresses) for non-postal employees, personal mobile phone numbers of postal employees, and signatures for both postal employees and non-postal officials pursuant to FOIA Exemption 6. Exemption 6 protects "personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552 (b)(6). The Supreme Court has held that the term "similar files" should be broadly interpreted. U.S. Dep't of State v. Washington Post Co., 456 U.S. 595, 599-603 (1982). We consider contact information and signatures pertaining to specific individuals as meeting the threshold criteria for protection under Exemption 6. See Brannum v. Dominguez, 377 F.Supp.2d 75, 84 (D.D.C. 2005).

² Under the FOIA, agencies may make disclosures as a matter of administrative discretion, even if the information is exempt. CNA Fin. Corp v. Donovan, 830 F.2d 1132, 1134 n.1 (D.C. Cir. 1987). Such a discretionary disclosure does not constitute a waiver with respect to similar types of information, and it does not diminish the right of the agency to claim exemptions for similar information when responding to future requests. Mobil Oil Corp v. EPA, 879 F.2d 698 (9th Cir. 1989).

Once the responsive information qualifies for the application of Exemption 6, the agency must balance the privacy interests of the individual(s) involved against the public interest, if any, that would be served by disclosure of such information. Dep't of the Air Force v. Rose, 425 U.S. 352, 372 (1976); Horner, 879 F.2d at 874. Although it is true generally that Postal Service employees should not have a reasonable expectation of privacy in their names when affixed to official Postal Service records, we do find that lower-level Postal Service employees should have an expectation of privacy concerning their signatures and their personal mobile phone numbers. Similarly, we find that non-postal employees have an expectation of privacy concerning their signatures. The release of signatures creates the opportunity for forgery and misappropriation of signatures. See Brannum, 377 F.Supp.2d at 84. Further, we find that non-postal employees should have an expectation of privacy concerning their contact information.

For purposes of the FOIA, the privacy interest identified above must be weighed against the interest of the public in general – shedding light on the conduct of government agencies – and not the particular interest of the requester. Dep't of Defense v. Fed. Labor Relations Auth., 510 U.S. 487, 496 (1994); Horner, 879 F.2d at 879. We submit that there is no public interest in the disclosure of the signature information we have redacted that is sufficient to outweigh the privacy interest of the individuals whose signature information is contained in the responsive record material. Also, revealing the contact information for non-postal employees would not contribute to the public's understanding of postal operations; therefore, we have redacted such information. See Kishore v. U.S. Dep't of Justice, 575 F. Supp. 2d 243, 257 (D.D.C. 2008) (individual information that does not reveal the operations of government falls outside FOIA's public interest purposes).

The absence of any identifiable public interest in disclosure leads us to conclude that the privacy interest identified above, however slight, warrants withholding the records. See Beck, 997 F.2d at 1494; Horner, 879 F.2d at 879. Consequently, pursuant to FOIA Exemption 6, we have decided to redact contact information (phone numbers and e-mail addresses) for non-postal employees, personal mobile telephone numbers of postal employees, and signatures of both postal and non-postal employees.

III. Conclusion

This is the final decision of the Postal Service on your right of access pursuant to the FOIA to these records. You may obtain judicial review of this decision by bringing suit for that purpose in the United States District Court for the district in which you reside or have your principal place of business, the district in which the records are located, or in the District of Columbia.

As an alternative to litigation, you may wish to utilize the services of the Office of Government Information Services (OGIS), National Archives and Records Administration. OGIS was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
Room 2510
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Telephone: 301-837-1996;
Facsimile: 301-837-0348;
Toll-free: 1-877-684-6448

For the General Counsel,

A handwritten signature in black ink, appearing to read "Chris T. Klepac", written in a cursive style.

Christopher T. Klepac
Chief Counsel
FOIA/Privacy & Government Relations

cc: Ms. Alvarado
Mr. Barnett
Ms. Eyre

MIKE THOMPSON

1ST DISTRICT, CALIFORNIA

COMMITTEE ON WAYS AND MEANS

SUBCOMMITTEE ON HEALTH

SUBCOMMITTEE ON SELECT
REVENUE MEASURES

PERMANENT SELECT

COMMITTEE ON INTELLIGENCE

CHAIRMAN, SUBCOMMITTEE ON TERRORISM,
HUMAN INTELLIGENCE, ANALYSIS AND
COUNTERINTELLIGENCE

SUBCOMMITTEE ON INTELLIGENCE COMMUNITY
MANAGEMENT



CONGRESS OF THE UNITED STATES
HOUSE OF REPRESENTATIVES
WASHINGTON, DC 20515

February 2, 2011

Exhibit 3

Docket No. A2001-21

DISTRICT OFFICES:

1040 MAIN STREET, SUITE 101
NAPA, CA 94559
(707) 226-9898

317 THIRD STREET, SUITE 1
EUREKA, CA 95501
(707) 269-9595

POST OFFICE BOX 2208
FORT BRAGG, CA 95437
(707) 962-0933

712 MAIN STREET, SUITE 101
WOODLAND, CA 95695
(530) 662-5272

CAPITOL OFFICE:

231 CANNON HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-3311

WEB: <http://mikethompson.house.gov>

Patrick R. Donahoe
Postmaster General and CEO
United States Postal Service
475 L'Enfant Plaza, SW, Room 10804
Washington, DC 20260-3500

Dear Mr. Donahoe:

I'm writing on behalf of my constituents in the city of Ukiah, California. Acknowledging with due respect the enormous challenges the USPS is facing I have some questions regarding the proposed possible closure and relocation of the downtown Ukiah post office.

The Ukiah post office is an historic downtown structure and it is home to one of the remaining WPA murals. Not only is the Ukiah post office a vital center to the community which includes supporting services for many businesses, seniors and neighborhoods but it is an economic engine. I am concerned and would like to know why this particular post office is on the chopping block.

My questions concern economic and future implications of the Ukiah post office relocation. First, please share a copy of the recently completed assessment to determine whether the downtown post office should be closed. I would also like to see a summary of the profit and loss for the Ukiah post office and for the annex in Ukiah. How does the viability of the Ukiah post office fit into the overall feasibility for the future success of the USPS? What is the proposed timeline for the community process that is followed when closing or moving a post office?

Thank you for taking the time to look into this as soon as possible. I look forward to working with you on this process and look forward to your timely reply.

Sincerely,

(b) (6)

MIKE THOMPSON
Member of Congress

cc: Tom A. Samra, Vice President, USPS Facilities
Rosemary Fernandez, District Manager
Mari Rodin, Mayor, City of Ukiah

TOM A. SAMRA
VICE PRESIDENT, FACILITIES



February 15, 2011

The Honorable Mike Thompson
Member of Congress
18th District, California
231 Cannon House Office Building
Washington, DC 20515

Dear Congressman Thompson:

I am writing in response to your letter of February 2, 2011, concerning the possible relocation of the Ukiah Post Office, located at 224 N. Oak Street, Ukiah, California 95482. I appreciate your concerns and want to assure you that prior to any action, all community input will be considered.

If it is decided that the relocation process should go forward, the Postal Service will adhere to the Section 106 process of the National Historic Preservation Act and obtain all necessary concurrences from the State Historic Preservation Office with regard to the mural. Our preference will be to relocate the mural to the annex location, however; if that is not practical, the Postal Service will consider putting the mural on loan.

Unfortunately, we are unable to release the recently completed assessment of the Ukiah Main Post Office, nor a profit and loss summary of the two offices you requested for Ukiah. The Postal Service considers these documents to be protected from disclosure by FOIA exemption 3 in conjunction with 39 U.S.C. § 410(c)(2).

The Postal Service is taking every action within our control to cut costs and streamline operations. I want to emphasize that what is being considered is a relocation of the Ukiah Main Post Office, and not a closing. In relocating a Post Office, the Postal Service is required to follow the procedures outlined in our Community Relations Regulations for U.S. Postal Service Facilities Projects, which is based on 39 CFR 241.4. The purpose of these procedures is to assure increased opportunities for members of the communities who may be affected by the project, along with local officials, to convey their views concerning the contemplated project and have them considered prior to any final action.

It is anticipated that a representative from the Pacific Facilities Service Office will initiate the community process within the next two weeks. The timeline for relocation as identified in 39 CFR Part 241.4 is approximately 45 calendar days. We will continue to keep you, our customers and other stakeholders informed as we go forward.

Sincerely,

A handwritten signature in blue ink, appearing to read "TASamra", written over a faint circular postmark.

Tom A. Samra

cc: Drew T. Aliperto, Vice President Pacific Area Operations
Rosemarie Fernandez, San Francisco District Manager
Mari Rodin, Mayor, City of Ukiah



March 9, 2011

Rosemarie Fernandez
San Francisco District Manager
United States Postal Service
P.O. Box 885050
San Francisco, CA 94188-5050

Re: Main Post Office Inspection

Dear Ms. Fernandez:

The City of Ukiah appreciates the USPS' concern for an open and public process regarding the proposal to close the Ukiah Main Post Office. The presentation made to the City by USPS officials on February 23, 2011, was useful.

A central issue in the USPS' determination to close the Main Post office is the condition of that building and the costs of repair. Your staff said at the February 23rd meeting that the USPS' survey "suggests" a cost of \$780,000 for repair of the roof, HVAC, electrical system, and fire alarm. At that meeting, we requested the full report related to the USPS' inspection and repair estimates for the Main Post Office. Our request was denied.

The postal service is subject to the Freedom of Information Act. In adopting regulations implementing the Act, the USPS has stated its general policy at 39 C.F.R. §265.2 (a) as follows:

It is the policy of the Postal Service to make its official records available to the public to the maximum extent consistent with the public interest. This policy requires a practice of full disclosure subject only to the specific exemptions required or authorized by law.

USPS has not identified an exemption from disclosure contained in the Act or in 39 C.F.R. §265.6 and §410 that justifies a decision not to disclose the USPS survey. Whether or not the survey is properly exempt from disclosure, without access to the survey and the ability to independently obtain information on the condition of the building and the estimated cost for repairs, Ukiah citizens affected by the USPS decision can only respond to the contention that it will cost too much to make the repairs. For that reason, the City Council unanimously decided at its meeting on March 2 to direct the City's building official, David Willoughby, to work with a local contractor to conduct a professional survey of, and prepare estimates for, the rehabilitation of the Main Post Office.

We would like access to areas of the Main Post Office that are not generally accessible to the public and request cooperation from local USPS staff to allow this to happen. The City of Ukiah will, of course, provide the USPS with our findings. Please feel free to call me at (707) 272-1937 if you would like to discuss this further.

Sincerely Yours,

Mari Rodin
Mayor

PACIFIC FACILITIES SERVICE OFFICE



March 23, 2011

The Honorable Mayor Rodin
300 Seminary Avenue
Ukiah, CA 95482



Dear Mayor Rodin:

Your letter dated March 9th addressed to Ms. Rosemarie Fernandez requesting access to the Ukiah Post Office has been referred to me. The Postal Service is not required to allow local government officials to come in and inspect Postal Service premises to substantiate costs to our repairs. The study to determine the condition of the North Oak Street facility was contracted to an outside firm. These costs were derived by licensed professionals within their respective disciplines.

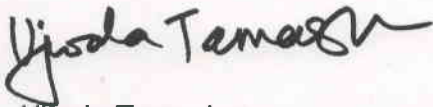
The Postal Service continues to experience a net loss in excess of \$329 million dollars. As such, we are making every effort to cut costs and streamline operations. The Ukiah Post Office is one of numerous facilities that has been studied within the Pacific Area.

As we go through the Public process, please keep in mind that relocating the retail services to our facility located on South Orchard Avenue is a recommendation. The recommendation is not based on the cost of repairs to our Downtown facility. The relocation of North Oak Street facility yields a substantial annual savings to the Postal Service. The Postal Service must leverage our core strategies. One of our core strategies is becoming a leaner, faster and smarter organization. Optimizing our network, realigning our workforce, reducing energy use and our physical footprint drives costs out of every aspect of the Postal Service.

The Postal Service considers local reports to be protected from disclosure by FOIA exemption 3 in conjunction with 39 U.S.C. § 410(c)(2). Subsection (c)(2) of section 410 provides that FOIA does not require the disclosure of "information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed." This section was passed as part of the Postal Reorganization Act, 39 U.S.C. . § § 101, et seq. (1970), which established the Postal Service on a corporate model and generally directed it to conduct its operations in accordance with sound business principles.

FOIA exemption 3 provides that agencies may withhold records that are exempted from disclosure by another statute which, "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). We consider that 39 U.S.C. § 410(c)(2) operates both independently and as an exempting statute within the scope of exemption 3(B). Allowing local government officials or their interested party to conduct an independent survey would not be considered to be a good business practice. Therefore, I am denying your request to gain access to our facility.

Sincerely,

A handwritten signature in black ink, appearing to read "Ujwala Tamaskar", with a stylized flourish at the end.

Ujwala Tamaskar
a/Manager
Pacific Facilities Service Office

bcc:

Area Vice President
San Francisco District Manager
Facilities representative
Government Relations representative
Public Affairs & Communications representative

CARMEL J. ANGELO
Chief Executive Officer
Clerk of the Board

PAULINE RANTALA
Senior Deputy Clerk of the
Board

Exhibit 7
Docket No. A2001-21

**COUNTY OF MENDOCINO
BOARD OF SUPERVISORS**

CONTACT INFORMATION
501 Low Gap Road • Room 1010
Ukiah, California 95482
TELEPHONE: (707) 463-4221
FAX: (707) 463-7237
Email: bos@co.mendocino.ca.us
Web: www.co.mendocino.ca.us/bos

March 22, 2011

Rosemary Fernandez
San Francisco District Manager
United States Postal Service
P.O. Box 885050
San Francisco, CA 94188-5050

Re: "Relocation" of Ukiah Main Post Office

Dear Ms. Fernandez,

On November 30, 2010, the Mendocino County Board of Supervisors requested that the United States Postal Service (USPS) conduct an open and public process regarding this issue. The USPS reply was non-responsive in that it merely acknowledged that relocation was under consideration and that local customers would be notified in advance of any changes. The point of our initial letter was to request meaningful involvement in the decision making process.

On February 23, 2011, USPS representatives met with a group of local citizens and City of Ukiah and Mendocino County officials and presented a letter confirming the intention to "relocate" the Ukiah Main Post Office, which for 74 years has been at the heart of the community. For all intents and purposes, this proposed action represents a closure and we shall refer to it as such. The proposed closure and relocation of postal services to the periphery of the community will have profound negative impacts on the downtown core.

At the February 23rd meeting a sheet was presented allegedly documenting the cost savings of the proposed closure. The community members present were told that the underlying data is not available for inspection. It is completely unacceptable that the USPS intends to withhold this information from the local community. This refusal fuels the suspicion that the proffered numbers will not withstand scrutiny. For instance, it is alleged that the Main Post Office requires \$780,000 in capital improvements, yet the USPS anticipates selling this single purpose building that requires major upgrades for \$600,000.

We renew the request that the USPS release the data that supposedly supports the recommendation to close the Ukiah Main Post Office. We also believe many of the current box holders and package service customers will resort to other options if the proposed recommendation is not reversed, likely resulting in an unanticipated loss of revenue to the USPS.

We hereby state our strong support for the recent request by the City of Ukiah to conduct an independent assessment of the Ukiah Main Post Office facility. Refusal to honor this reasonable request will further call into question the accuracy of the USPS assessment of the building.

We are equally concerned about the likely closure, relocation, or consolidation of other post office facilities in Mendocino County. In response to a direct question at the February 23rd meeting, the USPS officials present would only say there are no plans for closure "at this time." We believe the citizens of our local communities are entitled to know if the USPS is in the process of evaluating closure of facilities that in many cases help to define their identity and sense of community.

THE BOARD OF SUPERVISORS

CARRE BROWN
First District

JOHN MCCOWEN
Second District

JOHN PINCHES
Third District

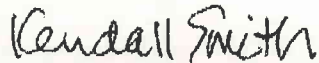
KENDALL SMITH
Fourth District

DAN HAMBURG
Fifth District

Page 2 of 2

In conclusion, we request release of the data on which the decision to close the Ukiah Main Post Office is based; support the request by the City of Ukiah to conduct an independent assessment; and reiterate the request for full disclosure of future plans for closure of USPS facilities in Mendocino County.

Thank you for your attention to these requests.



Kendall Smith, Chair
Mendocino County Board of Supervisors

cc: Honorable Mike Thompson, Congressman
Honorable Patrick R. Donahoe, Postmaster General
Honorable Mari Rodin, City of Ukiah Mayor

PACIFIC FACILITIES SERVICE OFFICE



February 23, 2011

The Honorable Mayor Rodin
300 Seminary Avenue
Ukiah, CA 95482

Dear Mayor Rodin:

Despite significant cost reductions, the Postal Service in quarter 1 of fiscal year 2011 experienced a net loss of some \$329 million dollars. Economic drivers that generate mail volume continue to reflect the sluggish economy, and changes in customer behavior reflect the ongoing migration of electronic communications.

In an effort to control and cut costs, it has been determined that it would be in the best interest of the Postal Service to relocate the retail services currently located at 224 North Oak Street to our facility located at 671 South Orchard.

In relocating retail services, the Postal Service is required to follow the procedures outlined in our Community Regulations Regulations for U.S. Postal Service Facilities Projects, which is based on 39 CFR 241.4. The purpose of these procedures is to assure increased opportunities for members of the communities who may be affected by the project, along with local officials, to convey their views concerning the contemplated project and have them considered prior to any final action.

The Postal Service wishes to work in partnership with your community. Therefore, we ask your assistance and cooperation in having this project scheduled for the next available town meeting so that the general public may express its opinions and offer constructive comments on the project.

Thank you for your participation in this process and we look forward to continue working with you and your staff as this project develops.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Barnett", with a long horizontal flourish extending to the right.

Jim D. Barnett
Manager
Pacific Facilities Service Office

395 OYSTER POINT BOULEVARD, SUITE 225
SOUTH SAN FRANCISCO, CA 94080-0300
(650) 615-7200

SHEET PRESENTED TO CITY
BY USPS 2/23/11

UKIAH MAIN OFFICE

Exhibit 9

Docket No. A2001-21

The Main Office is a 11,200 square foot owned facility

We have occupied the building since 1937

The Main Office houses retail only so there is a surplus of space

The Carrier Annex is a 14,432 square foot owned facility

We have occupied the building since 1998

Ukiah Carrier Annex .8 miles away from the Main Office

A recent building survey was completed for the Ukiah Main Office which suggests replacing the ROOF, HVAC, Electrical and Fire Alarm due to the systems failing. Projected bugetary cost of \$780,000 ~~(~~for roof, hvac, electrical and fire alarm~~)~~

The alternative was studied to relocate the retail from the Main Office to the Carrier Annex

	One Time Cost		Annual Savings
Utilities			\$28,065
Craft Labor (PS06 clerk)			\$81,719
Building Maintenance Labor			\$73,392
Inter-Station Transportation			\$3,745
Relocate Retail to Carrier Annex	\$360,000		
Total Annual Savings			\$186,921
Ten Year Operating Cost Avoidance			\$1,869,210

Sale of Main Office \$600,000
with postalization of CA
Net Cash Gain \$240,000

**OFFICE OF HISTORIC PRESERVATION
DEPARTMENT OF PARKS AND RECREATION**

1725 23rd Street Suite 100
SACRAMENTO, CA 95816-7100
(916) 445-7000 Fax: (916) 445-7053
calshpo@ohp.parks.ca.gov
www.ohp.parks.ca.gov



Exhibit 10
Docket No. A2001-21

May 4, 2011

Mr. Dallan C. Wordkemper
Federal Preservation Officer
United States Postal Service
4301 Wilson Boulevard Suite 300
Arlington, VA 22203-1861

Subject: Ukiah Main Post Office National Register Nomination

Dear Mr. Wordkemper

Please find enclosed the National Register nomination for the Ukiah Main Post Office. Although not required under 36CFR Part 60.6(y), at the request of the National Register applicant(s), I reviewed the nomination and suggested changes. The applicants revised their nomination based on my suggestions. In my opinion, the Ukiah Main Post Office meets National Register Criteria A and C. I have signed the nomination as commenting official.

If you have any questions, please do not hesitate to telephone Jay Correia at 916-653-9019 or contact him via e-mail at jcorr@parks.ca.gov

Sincerely,

Milford Wayne Donaldson, F.A.I.A.
State Historic Preservation Officer

P.O. Box 1001
Ukiah, CA 95482
April 23, 2011

Mary Anne Gibbons
General Counsel
United States Postal Service
475 L'Enfant Plaza SW
Washington, D.C. 20260

RE: Violations of law, Ukiah Post Office closure

Dear Ms. Gibbons:

The purpose of this letter is to inform you of violations of law by the Postal Service in connection with the proposed closure of the Ukiah Main Post Office, 224 N. Oak Street, Ukiah, California 95482.

These violations fall into three categories:

1. National Historic Preservation Act [16 USC §470 et. seq.]

Under the National Historic Preservation Act [§110(2)(a)], the USPS has an affirmative duty to nominate the Ukiah Post Office for listing on the National Register of Historic Places. USPS failed to perform this duty. The initiative of Congressman Mike Thompson on April 8, 2011 in submitting a completed nomination package to the USPS and the California State Historic Preservation Office assists the USPS in compliance and establishes that the Ukiah Post Office is eligible for listing on the National Register.

As an eligible property, the Ukiah Post Office has certain protections under NHPA:

A. USPS is required to "use, to the maximum extent feasible" the Ukiah Post Office prior to "acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities." [§110(a)(1)] The following facts establish that it is "feasible" to continue to use the Ukiah Post Office:

1. It has been in continuous operation for 74 years.
2. It remains in active use.
3. It is owned by USPS.
4. There are no conflicting land uses, traffic problems, or other external factors that negatively affect the facility.

5. It has strong customer support including 1450 post office box rentals and heavy counter traffic.
6. It has exceptionally durable reinforced concrete construction that is in good condition.
7. There is no other facility that is currently built, configured and equipped to replace the Ukiah Post Office and USPS could provide such a replacement only at substantial cost, estimated by USPS as \$360,000 in a disclosure to the City of Ukiah on February 23, 2011.

When it is put to the test, any independent judicial authority will find that it is "feasible" for the Postal Service to continue to use the Ukiah Post Office. Therefore, the National Historic Preservation Act, as presently written, makes the proposed closure illegal.

B. Prior to taking any action that affects an historic property, the Postal Service must allow review by certain outside entities. This includes referral to the federal Advisory Council on Historic Preservation and compliance with the extensive Section 106 consultation process. No referral has been made. The City of Ukiah, as the host jurisdiction, is entitled to an invitation to be a consulting party [36 CFR §800.2(c)(3)] and no such invitation has been provided.

2. Closure and Consolidation Procedures [39 CFR §241.3]

The proposed action includes closure of the Ukiah Main Post Office at 224 N. Oak Street and consolidation of its functions into the Carrier Annex at 671 Orchard Avenue. USPS has repeatedly claimed that the proposed action is a "relocation" under 39 CFR §241.4. This is a subterfuge and misapplication of 39 CFR §241.4, which is clearly intended to apply only in situations where the USPS has inadequate space or an unsuitable building and must find new quarters for one of those reasons.

The facts show that the proposed action is a *de facto* "consolidation" of two separate post offices and therefore can occur only if 39 CFR §241.3 is followed, which has not been done. The Carrier Annex is not a branch or station to the Ukiah Main Post Office because it sends no mail to the Ukiah Main Post Office for sorting and forwarding and isn't subsidiary to the Ukiah Main Post Office in any organizational or operational way. Furthermore, the Carrier Annex provides the following independent retail services: receiving bulk mailings and payments, distributing general delivery mail over the counter, distributing notification parcels over the counter, and providing maintenance and installation of approved locked mailed receptacles to customers.

Therefore the only legal definition into which the Carrier Annex falls is "post office" and the proposed action is "consolidation with another post office" which is governed by 39 CFR §241.3(a).

For a consolidation, the following procedures are required, none of which has been performed to date by the USPS:

A. Preparation of a written document entitled "Proposal to Consolidate the Ukiah Main Post Office" that must address each of the following in separate sections:

1. Responsiveness to community needs
2. Comparison of services before and after the consolidation
3. Disclosure of aspects of consumer service that will be less advantageous
4. Effect on community served
5. Effect on employees
6. Economic effect on Postal Service [39 CFR §241.3(c)(4)]

B. Post a copy of the written proposal and a signed invitation for comments prominently in each affected post office, beginning a 60-day comment period. [39 CFR §241.3(d)(1)]

C. Following this process, all written comments must receive an identifying number and be assembled in chronological order as the record of the proceedings, which must be made available at the Ukiah Post Office for public inspection. The District Manager must analyze the record prior to making a decision, and if the decision favors consolidation, it must be presented to the USPS vice president for review and can be appealed to the Postal Regulatory Commission by any member of the public who is served by the Ukiah Main Post Office. [39 CFR §241.3(c)(4)]

These are important rights afforded to the public under law and the failure to observe these rights will be cause for appeal, initially to the Postal Regulatory Commission. The attempt to improperly use 39 CFR §241.4 to block review by the Postal Regulatory Commission will not be countenanced by that body, based on its recent rulings.

3. National Environmental Protection Act (NEPA) [42 USC §4321 et seq.]

The Postal Service apparently hasn't initiated any of the noticing or assessment procedures required by NEPA. Presumably, the Postal Service believes that the project is categorically exempt under 39 CFR §775(b)(14 or 15), but such a claim is obviously invalid. The project includes major construction at the Carrier Annex to add 32 parking spaces, a lobby, a service counter, numerous post office boxes, and relocation of two

existing offices that are in the way. The construction phase of the project alone makes it ineligible for categorical exemption.

At a public meeting attended by USPS representatives on April 21, 2011, potentially significant environmental impacts were identified including traffic congestion at nearby intersections.

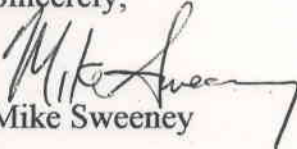
Although it has thus far refused to admit it, the USPS has a second phase to the project which includes closure of two nearby post offices in Talmage and Calpella, which will be proven through discovery if litigation is necessary. This second phase will substantially worsen the traffic impacts. These additional closures must be included in the Environmental Assessment since NEPA forbids "piecemealing" a project to minimize impacts [40 CFR §1508.27(b)(7); *Alpine Lakes Protection Society v. Schlapper*, 518 F.2d 1089 (1975)].

4. Conclusion

The closure is vigorously opposed by the City of Ukiah, the County of Mendocino, and local citizens who presented the USPS with 5,000 petition signatures on April 21, 2011. While opposing this particular USPS proposal, the local entities are also supportive of the Postal Service and want it to be financially healthy. Therefore they hope that USPS resources won't be squandered in a futile effort to defend an ill-conceived closure process against the legal challenges that will be the last resort of the Ukiah community.

Please act as the USPS counsel to prevent further violations of law in this matter.

Sincerely,


Mike Sweeney

cc: Tom Samra, USPS Vice President-Facilities
Drew Aliperto, USPS Vice President-Pacific
Rep. Mike Thompson, 1st District, California

PACIFIC FACILITIES SERVICE OFFICE



June 20, 2011

The Honorable Mayor Rodin
300 Seminary Avenue
Ukiah, CA 95482

Dear Mayor Rodin:

On June 13, 2011 a recommendation was forwarded to the Vice President of Facilities for his approval to relocate the retail services currently located at 224 North Oak Street to our facility located at 671 South Orchard.

This is written notice that on June 20, 2011 the Vice President of Facilities, with the concurrence of the Vice President Delivery and Post Office Operations, approved the request to relocate the retail services from the North Oak Street facility to our South Orchard facility.

As provided in CFR 39 241.4, your office and members of the Ukiah community may appeal this decision within the next 15 days of the receipt of this letter. As appropriate, your appeal should be directed to Vice President, Facilities and addressed as follows:

Vice President, Facilities
Attn: Diana K. Alvarado
Pacific Facilities Service Office
Facilities Planning and Requirements
395 Oyster Point Boulevard, Suite 225
South San Francisco, CA 94080-0300

Sincerely,

A handwritten signature in black ink, appearing to read "Ujwala Tamaskar".

Ujwala Tamaskar
Manager/a

Pacific Facilities Service Office



July 6, 2011

Vice President Facilities
Attn: Diana K. Alvarado
Pacific Facilities Service Office
Facilities Planning and Requirements
395 Oyster Point Boulevard, Suite 225
South San Francisco, CA 94080-0300

Re: Appeal of decision to close Ukiah Main Post Office

Dear Ms. Alvarado:

By this letter the City of Ukiah appeals the decision to close the Main Ukiah Post Office, which has been located at 224 N. Oak Street, in the heart of the historic downtown of the City of Ukiah since 1937, dispose of the building, and transfer the retail and mail processing functions from that building to the current postal annex located at 671 S. Orchard Avenue, in a portion of the City that was annexed in the late 1970s. The project necessarily includes physical changes to the postal annex to accommodate these additional retail and processing functions.

The City is appealing the decision for the following reasons.

1. The City has been deprived of a meaningful appeal in violation of 39 C.F.R. §241(c)(6). According to the June 20, 2011, letter from Ujwala Tamaskar to Mayor Mari Rodin, announcing the decision to take these actions, the Vice President, Facilities, has already approved this action. 39 C.F.R. §241.4(c)(6), which provides the procedures for this appeal, states that:

The Vice President, Facilities, will obtain the views of the decision maker, review relevant parts of the project file, and if necessary request more information from the appellant. Upon review of the facts, the Vice President, or a representative, will issue a written determination . . .

This procedure implies that the Vice President, Facilities is not the initial decision-maker and will act impartially in deciding the appeal, only consulting with the decision maker after an appeal has been filed. Apparently, the Vice President, Facilities, was the decision-maker in this case and the City is being deprived of a meaningful appeal, because its only right of appeal is to the initial decision-maker.

2. Before undertaking a major federal action, as described in the first paragraph of this letter, the Postal Service was required to perform an environmental assessment in accordance with the National Environmental Policy Act ("NEPA"). 42 U.S.C. 4321 et seq. and implementing regulations at 40 C.F.R. §1500 et seq. The postal service has not furnished the City with a copy of the environmental assessment and the City does not believe that one has been prepared in

Subject: Appeal of decision to close downtown Post Office

Date:

accordance with the required procedures. The project is a class of action requiring an environmental assessment under 39 C.F.R. §775.5(b). See, e.g., subsections (9) [Acquisition or lease of an existing building involving new uses or a change in use to a greater environmental intensity];

(10) [Real property disposal involving a known change in use to a greater environmental intensity].

Alternatively, if the project does not come within any of the classes identified in §775.5(b), the regulation is invalid, because it does not specifically identify categorically excluded projects or provide criteria for determining when, due to unusual circumstances, an environmental assessment should be performed for a class of project which is categorically excluded. The historic character of the Ukiah Post Office and the unique and artistically important mural therein is just one circumstance which is unusual and warrants an environmental assessment. In addition, the Ukiah Post Office lies in the heart of Ukiah's historic downtown. Removing the retail postal operations could well lead to the closure of other businesses in the downtown which, in turn, could lead to physical blight, the deterioration of buildings and a downward spiral in the downtown with substantial adverse impacts on the physical and social environment of the City.

The City has formed a Main Street Program for downtown businesses, a business improvement district, and a redevelopment agency to help support and maintain the financial health and viability of the downtown. The City has spent substantial sums to develop a new zoning ordinance for the downtown with a primary goal of preserving its unique architectural character. The postal service decision to close the Ukiah Post Office and consolidate its retail operations with those at the postal annex undermines all of these efforts and poses unique and serious adverse impacts on the physical and social environment of the City.

3. The proposed action violates the Intergovernmental Cooperation Act, 31 U.S.C. §6506, including Executive Order 12372, because the postal service has made no effort to accommodate the concerns expressed by the Mayor and City Council or explain why those concerns cannot be accommodated. In that connection, the City Council formally requested detailed information developed by the postal service in reaching its decision to close the Main Ukiah Post Office and dispose of the building. The postal service refused to provide that information, relying on the deliberative process privilege in the Freedom of Information Act. The postal service even refused to allow the City to inspect the Main Post Office building to make an independent determination of the cost to rehabilitate and preserve the building.

4. The project qualifies as a consolidation of a post office within the meaning of 39 C.F.R. §241.3 and the decision required the postal service to make specified findings which it has not done.

5. The proposed project violates the postal service obligations under 16 U.S.C. §470h to assume responsibility for the preservation of historic properties which it owns or controls and to use historic buildings to carry out its mission to the maximum extent feasible. Again, the postal service refused to allow the City the opportunity to gather information in order to demonstrate that there may be little or no cost savings in carrying out the proposed project as compared to

Subject: Appeal of decision to close downtown Post Office

Date:

continuing the use of the historic post office building. Under the National Historic Preservation Act, the postal service has an obligation to nominate buildings that are eligible for listing in the National Register of Historic Places and to manage and maintain buildings which are eligible for nomination in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with section 106 of the Act [16 USCS § 470f] and give special consideration to the preservation of such values in the case of properties designated as having National significance. The Ukiah Post Office qualifies for this treatment and it is not receiving it from the postal service.

6. The postal service is required to engage in consultation under Section 106 of the National Historic Preservation Act which it has not done before making the decisions which will lead to discontinuing its use, disposition of the building and the possible destruction of its historic character and of the historic and artistically significant mural it contains.

7. The City joins in the appeal filed by the Save Ukiah Post Office Committee and incorporates herein by reference the grounds for appeal stated in its letter, appealing the decision.

If you need additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mari Rodin". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mari Rodin, Mayor
City of Ukiah

cc:

City Council
Congressman Mike Thompson
Senator Diane Feinstein
Patrick Donahue, Postmaster General
United States Postal Service
475 L'Enfant Plaza SW
Washington, D.C. 20260